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DEPARTMENT OF HOMELAND SECURITY

COAST GUARD

33 CFR Part 165

[COTP Memphis-03-003]

USCG-2004-16938-16

RIN 1625-AA00

Safety Zone; Lower Mississippi River Mile 600.0 to 604.0,
Rosedale, MS

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Lower Mississippi River from mile 600.0 to mile 604.0 near Rosedale, MS. This safety zone is needed to protect persons and vessels from the potential safety hazards associated with the sunken barge from the M/V Show-Me-State's tow. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port Memphis or a designated representative.

DATES: This rule is effective from 9:30 a.m. through 2:45 p.m. on October 10, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP Memphis-03-003] and are available for inspection or copying at

Marine Safety Office Memphis, 200 Jefferson Avenue, Suite 1301, Memphis, TN 38103 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer James Dixon at, Marine Safety Office Memphis, at (901) 544-3941 extension 2126.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the Federal Register. ~~Information was made available to the Coast Guard in insufficient time to publish an NPRM or for publication in the Federal Register 30 days prior to the event.~~ Publishing a NPRM and delaying its effective date would be contrary to public interest because immediate action is needed to protect vessels and mariners from the hazards associated with the sunken barge from the M/V Show Me State's tow.

Background and Purpose

^{RE}
The Captain of the Port Memphis, TN is establishing a safety zone for all waters of the Lower Mississippi River

from mile 600.0 to mile 604.0 for the locating and marking of the sunken barge from M/V Show-Me-State's tow near Rosedale, MS. This safety zone is needed to protect persons and vessels from the potential safety hazards associated with the locating and marking of the sunken barge from M/V Show-Me-State's tow. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port Memphis or a designated representative.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS)

This rule will only be in effect for a short period of time and notifications to the marine community will be made through broadcast notice to mariners. The impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 - 612), we have considered whether this rule would have a

significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Lower Mississippi River from mile 600.0 to 604.0 from 9:30 a.m. through 2:45 p.m. on October 10, 2003. This safety zone will not have a significant economic impact on a substantial number of small entities because this rule will be in effect for only a short period of time.

If you are a small business entity and are significantly affected by this regulation please contact Chief Petty Officer James Dixon, Marine Safety Office Memphis, TN at (901) 544-3941 extension 2126.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we

offered to assist small entities in understanding the rule so they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 - 3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health

Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore,

it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction, from further environmental documentation.

Under figure 2-1, paragraph (34)(g), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

Part 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS
AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.¹.

2. A new temporary § 165.T08-142 is added to read as follows:

§ 165.T08-142 Safety Zone; The Lower Mississippi River Mile 600.0 to Mile 604.0, Rosedale, MS.

(a) Location. The following area is a safety zone: all waters of the Lower Mississippi River from mile 600.0 to mile 604.0, extending the entire width of the waterway.

(b) Effective date. From 9:30 a.m. through 2:45 p.m. on October 10, 2003.

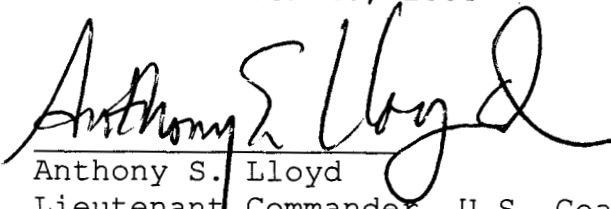
(c) Regulations. (1) In accordance with the general regulations in §165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Memphis, TN.

(2) Persons or vessels requiring entry into or passage through must request permission from the Captain of the Port Memphis, TN, or a designated representative. They

may be contacted via VHF Channel 13 or 16, or via telephone at (901) 544-3912 x 2124.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Memphis, TN, and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

DATED: October 10, 2003

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04/10/03


Anthony S. Lloyd
Lieutenant Commander, U.S. Coast Guard
~~Alternate~~ Captain of the Port Memphis, TN
Acting